

REVISED JUDICATURE ACT OF 1961 (EXCERPT)

Act 236 of 1961

CHAPTER 32

FORECLOSURE OF MORTGAGES BY ADVERTISEMENT

600.3201 Foreclosure by advertisement of mortgage containing power of sale; exception.

Sec. 3201. Every mortgage of real estate, which contains a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner specified in this chapter. However, the procedures set forth in this chapter shall not apply to mortgages of real estate held by the Michigan state housing development authority.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1981, Act 172, Imd. Eff. Dec. 10, 1981.

Constitutionality: Plaintiff's claim of unconstitutionality for § 600.3201 et seq. failed for lack of the existence of state action. *Cramer v. Metropolitan Savings and Loan Association*, 401 Mich. 252, 258 N.W.2d 20 (1977).

600.3204 Foreclosure by advertisement; circumstances; installments as separate and independent mortgage; redemption; chain of title.

Sec. 3204. (1) A party may foreclose a mortgage by advertisement if all of the following circumstances exist:

- (a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.
- (b) An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage; or, if an action or proceeding has been instituted, the action or proceeding has been discontinued; or an execution on a judgment rendered in an action or proceeding has been returned unsatisfied, in whole or in part.
- (c) The mortgage containing the power of sale has been properly recorded.
- (d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

(2) If a mortgage is given to secure the payment of money by installments, each of the installments mentioned in the mortgage after the first shall be treated as a separate and independent mortgage. The mortgage for each of the installments may be foreclosed in the same manner and with the same effect as if a separate mortgage were given for each subsequent installment. A redemption of a sale by the mortgagor has the same effect as if the sale for the installment had been made upon an independent prior mortgage.

(3) If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale under section 3216 evidencing the assignment of the mortgage to the party foreclosing the mortgage.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1994, Act 397, Imd. Eff. Dec. 29, 1994;—Am. 2004, Act 186, Imd. Eff. July 1, 2004.

600.3208 Notice of foreclosure; publication; posting.

Sec. 3208. Notice that the mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, shall be given by publishing the same for 4 successive weeks at least once in each week, in a newspaper published in the county where the premises included in the mortgage and intended to be sold, or some part of them, are situated. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county. In every case within 15 days after the first publication of the notice, a true copy shall be posted in a conspicuous place upon any part of the premises described in the notice.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1971, Act 104, Eff. Mar. 30, 1972.

600.3212 Notice of foreclosure by advertisement; contents.

Sec. 3212. Every notice of foreclosure by advertisement shall include all of the following:

- (a) The names of the mortgagor, the original mortgagee, and the foreclosing assignee, if any.
- (b) The date of the mortgage and the date the mortgage was recorded.
- (c) The amount claimed to be due on the mortgage on the date of the notice.
- (d) A description of the mortgaged premises that substantially conforms with the description contained in the mortgage.
- (e) For a mortgage executed on or after January 1, 1965, the length of the redemption period as determined under section 3240.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1964, Act 102, Eff. Aug. 28, 1964;—Am. 1994, Act 397, Imd. Eff. Dec. 29, 1994;—Am. 2004, Act 186, Imd. Eff. July 1, 2004.

600.3216 Sale; time and place.

Sec. 3216. The sale shall be at public sale, between the hour of 9 o'clock in the forenoon and 4 o'clock in the afternoon, at the place of holding the circuit court within the county in which the premises to be sold, or some part of them, are situated, and shall be made by the person appointed for that purpose in the mortgage, or by the sheriff, undersheriff, or a deputy sheriff of the county, to the highest bidder.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3220 Sale; adjournment; notice; posting; publication.

Sec. 3220. Such sale may be adjourned from time to time, by the sheriff or other officer or person appointed to make such sale at the request of the party in whose name the notice of sale is published by posting a notice of such adjournment before or at the time of and at the place where said sale is to be made, and if any adjournment be for more than 1 week at one time, the notice thereof, appended to the original notice of sale, shall also be published in the newspaper in which the original notice was published, the first publication to be within 10 days of the date from which the sale was adjourned and thereafter once in each full secular week during the time for which such sale shall be adjourned. No oral announcement of any adjournment shall be necessary.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3224 Sale of distinct parcels.

Sec. 3224. If the mortgaged premises consist of distinct farms, tracts, or lots not occupied as 1 parcel, they shall be sold separately, and no more farms, tracts, or lots shall be sold than shall be necessary to satisfy the amount due on such mortgage at the date of the notice of sale, with interest and the cost and expenses allowed by law but if distinct lots be occupied as 1 parcel, they may in such case be sold together.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3228 Sale; purchase by mortgagee or assigns.

Sec. 3228. The mortgagee, his assigns, or his or their legal representatives, may, fairly and in good faith, purchase the premises so advertised, or any part thereof, at such sale.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3232 Deed of sale; endorsement; deposit with register; recording; entry upon redemption.

Sec. 3232. The officer or person making the sale shall forthwith execute, acknowledge, and deliver, to each purchaser a deed of the premises bid off by him; and if the lands are situated in several counties he shall make separate deeds of the lands in each county, and specify therein the precise amounts for which each parcel of land therein described was sold. And he shall endorse upon each deed the time when the same will become operative in case the premises are not redeemed according to law. Such deed or deeds shall, as soon as practicable, and within 20 days after such sale, be deposited with the register of deeds of the county in which the land therein described is situated, and the register shall endorse thereon the time the same was received, and for the better preservation thereof, shall record the same at length in a book to be provided in his office for that purpose; and shall index the same in the regular index of deeds, and the fee for recording the same shall be included among the other costs and expenses allowed by law. In case such premises shall be redeemed, the register of deeds shall, at the time of destroying such deed, as provided in section 3244 of this chapter, write on the face of such record the word "Redeemed", stating at what date such entry is made, and signing such entry with his official signature.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3236 Deed of sale; effect upon failure to redeem; prior liens.

Sec. 3236. Unless the premises described in such deed shall be redeemed within the time limited for such redemption as hereinafter provided, such deed shall thereupon become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter, except as to any parcel or parcels which may have been redeemed and canceled, as hereinafter provided; and the record thereof shall thereafter, for all purposes be deemed a valid record of said deed without being re-recorded, but no person having any valid subsisting lien upon the mortgaged premises, or any part thereof, created before the lien of such mortgage took effect, shall be prejudiced by any such sale, nor shall his rights or interests be in any way affected thereby.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3240 Redemption of premises; payment; redemption of senior lien; defenses; recordation; redemption periods; amount stated in recorded affidavit.

Sec. 3240. (1) A purchaser's deed is void if the mortgagor, the mortgagor's heirs, executors, or administrators, or any person lawfully claiming under the mortgagor or the mortgagor's heirs, executors, or administrators redeems the entire premises sold by paying the amount required under subsection (2), within the applicable time limit prescribed in subsections (7) to (12), to the purchaser or the purchaser's executors, administrators, or assigns, or to the register of deeds in whose office the deed is deposited for the benefit of the purchaser.

(2) The amount required to be paid under subsection (1) is the sum that was bid for the entire premises sold, with interest from the date of the sale at the interest rate provided for by the mortgage, together with the amount of the sheriff's fee paid by the purchaser under section 2558(2)(q), and an additional \$5.00 as a fee for the care and custody of the redemption money if the payment is made to the register of deeds. The register of deeds shall not determine the amount necessary for redemption. The purchaser shall attach an affidavit with the deed to be recorded under this section that states the exact amount required to redeem the property under this subsection, including any daily per diem amounts, and the date by which the property must be redeemed shall be stated on the certificate of sale. The purchaser may include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee may charge a fee as stated in the affidavit and may be authorized by the purchaser to receive redemption funds. The purchaser shall accept the amount computed by the designee.

(3) If a distinct lot or parcel separately sold is redeemed, leaving a portion of the premises unredeemed, the deed shall be void only to the redeemed parcel or parcels.

(4) If after the sale the purchaser, the purchaser's heirs, executors, or administrators, or any person lawfully claiming under the purchaser or the purchaser's heirs, executors, or administrators pays taxes assessed against the property, amounts necessary to redeem senior liens from foreclosure, condominium assessments, homeowner association assessments, community association assessments, or premiums on an insurance policy covering any buildings located on the property that under the terms of the mortgage it would have been the duty of the mortgagor to pay if the mortgage had not been foreclosed and that are necessary to keep the policy in force until the expiration of the period of redemption, redemption shall be made only upon payment of the sum specified in subsection (2) plus the amounts specified in this subsection with interest on the amounts specified in this subsection from the date of the payment to the date of redemption at the interest rate specified in the mortgage, if all of the following are filed with the register of deeds with whom the deed is deposited:

(a) An affidavit by the purchaser or someone in his or her behalf who has knowledge of the facts of the payment showing the amount and items paid.

(b) The receipt or copy of the canceled check evidencing the payment of the taxes, amounts necessary to redeem senior liens from foreclosure, condominium assessments, homeowner association assessments, community association assessments, or insurance premiums.

(c) An affidavit of an insurance agent of the insurance company stating that the payment was made and what portion of the payment covers the premium for the period before the expiration of the period of redemption.

(5) If the redemption payment in subsection (4) includes an amount used to redeem a senior lien from a nonjudicial foreclosure, the mortgagor shall have the same defenses against the purchaser with respect to the amount used to redeem the senior lien as the mortgagor would have had against the senior lien.

(6) The register of deeds shall indorse on the documents filed under subsection (4) the time they are received. The register of deeds shall record the affidavit of the purchaser only and shall preserve in his or her files the recorded affidavit, receipts, insurance receipts, and insurance agent's affidavit until expiration of the period of redemption.

(7) For a mortgage executed on or after January 1, 1965, on commercial or industrial property, or multifamily residential property in excess of 4 units, the redemption period is 6 months from the date of the sale.

(8) For a mortgage executed on or after January 1, 1965, on residential property not exceeding 4 units and not more than 3 acres in size, if the amount claimed to be due on the mortgage at the date of the notice of foreclosure is more than 66-2/3% of the original indebtedness secured by the mortgage, the redemption period is 6 months.

(9) For a mortgage on residential property not exceeding 4 units and not more than 3 acres in size, if the property is abandoned as determined under section 3241, the redemption period is 3 months.

(10) For a mortgage on residential property not exceeding 4 units and not more than 3 acres in size, if the

amount claimed to be due on the mortgage at the date of the notice of foreclosure is more than 66-2/3% of the original indebtedness secured by the mortgage and the property is abandoned as determined under section 3241, the redemption period is 1 month.

(11) If the property is abandoned as determined under section 3241a, the redemption period is 30 days.

(12) In any other case, the redemption period is 1 year from the date of the sale.

(13) The amount stated in any affidavits recorded under this section shall be the amount necessary to satisfy the requirements for redemption under this section.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1964, Act 15, Eff. Aug. 28, 1964;—Am. 1964, Act 102, Eff. Aug. 28, 1964;—Am. 1971, Act 104, Eff. Mar. 30, 1972;—Am. 1972, Act 377, Eff. Mar. 30, 1973;—Am. 1986, Act 94, Imd. Eff. May 7, 1986;—Am. 1994, Act 397, Imd. Eff. Dec. 29, 1994;—Am. 1996, Act 214, Imd. Eff. May 28, 1996;—Am. 2000, Act 380, Imd. Eff. Jan. 2, 2001;—Am. 2004, Act 538, Eff. Mar. 30, 2005.

600.3241 Abandonment of premises; presumption.

Sec. 3241. For purposes of this chapter, abandonment of premises shall be conclusively presumed upon satisfaction of the following requirements:

(a) Within 30 days before the commencement of foreclosure proceedings hereunder, the mortgagee mails by certified mail, return receipt requested, to the mortgagor's last known address a notice that the subject mortgage is in default and that the mortgagee intends to foreclose it.

(b) Before commencement of foreclosure proceedings hereunder, the mortgagee executes and causes to be duly recorded in the county where the premises are located an affidavit which states:

(i) That the mortgagee has mailed to the last known address of the mortgagor a notice of default and intention to foreclose pursuant to subdivision (a) and that the mortgagor has not responded to the notice.

(ii) That the mortgagee has made a personal inspection of the mortgaged premises and that the inspection does not reveal that the mortgagor or persons claiming under him are presently occupying or intend to occupy the premises.

(c) The mortgagee mails by certified mail, return receipt requested, a copy of the affidavit recorded pursuant to subdivision (b) to the mortgagor at his last known address before commencement of foreclosure proceedings.

(d) The mortgagor, his heirs, executor, administrator, or any person lawfully claiming from, or under 1 of them, before expiration of the period of redemption, does not give a written affidavit to the mortgagee and record a duplicate original in the county where the premises are located stating that the mortgagor or person claiming under him is occupying or intends to occupy the premises.

History: Add. 1971, Act 104, Eff. Mar. 30, 1972.

600.3241a Abandonment of premises; residential property not exceeding 4 units and not more than 3 acres in size; presumption; foreclosure proceedings to which section applicable.

Sec. 3241a. (1) For purposes of this chapter, if foreclosure proceedings have been commenced under this chapter against residential property not exceeding 4 units and not more than 3 acres in size, abandonment of premises shall be conclusively presumed upon satisfaction of the following requirements:

(a) The mortgagee has made a personal inspection of the mortgaged premises and the inspection does not reveal that the mortgagor or persons claiming under the mortgagor are presently occupying or will occupy the premises.

(b) The mortgagee has posted a notice at the time of making the personal inspection and has mailed by certified mail, return receipt requested, a notice to the mortgagor at the mortgagor's last known address, which notices state that the mortgagee considers the premises abandoned and that the mortgagor will lose all rights of ownership 30 days after the foreclosure sale unless the mortgagor; the mortgagor's heirs, executor, or administrator; or a person lawfully claiming from or under 1 of them provides the notice required by subdivision (c).

(c) Within 15 days after receipt of a notice required by subdivision (b), the mortgagor; the mortgagor's heirs, executor, or administrator; or a person lawfully claiming from or under 1 of them does not give written notice by first-class mail to the mortgagee at an address provided by the mortgagee in the notices required by subdivision (b) stating that the premises are not abandoned.

(2) This section applies to a foreclosure proceeding filed or pending after May 15, 1986.

History: Add. 1986, Act 94, Imd. Eff. May 7, 1986.

600.3244 Redemption; destruction of deed; record.

Sec. 3244. Upon the payment of the entire sum bid at such sale, and interest thereon, and the fee of \$5.00 mentioned in section 3240 to the register in whose office the deed therefor shall have been deposited, or upon delivering to such register a certificate, signed and acknowledged by the person entitled to receive the same, and certified by some officer authorized to take the acknowledgment of deeds, setting forth that such sum, with interest, has been paid to such person, and upon paying to such register a fee of 25 cents, such register shall thereupon destroy such deed, and shall enter in the margin of the record of such mortgage, a memorandum that such mortgage is satisfied; or in case the premises shall have been sold in parcels, and 1 or more of said parcels shall have been redeemed, as hereinbefore provided, it shall then be the duty of the register to enter upon the face of said sheriff's deed, and the record thereof, a memorandum that the same is inoperative as to the parcel or parcels so redeemed, and to enter in the margin of the record of such mortgage a memorandum that the same is satisfied as to the parcel or parcels so redeemed.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1963, Act 240, Eff. Sept. 6, 1963.

600.3248 Redemption; refusal to certify payment; civil liability.

Sec. 3248. If any person entitled to receive such redemption moneys, shall, upon payment or tender thereof to him, refuse to make and acknowledge such certificate of payment, he shall be liable to the person aggrieved thereby, in the sum of \$100.00 damages, over and above all the actual damages sustained, to be recovered in a civil action, except that no damages of any kind may be recovered from any register of deeds who shall refuse to accept tender of payment after the time indorsed upon the deed when the same shall become operative in case the premises are not redeemed, and the officer or person making the sale shall be entitled to rely conclusively upon the recital of the length of the redemption period contained in the notice of foreclosure in making such indorsement upon the deed.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1964, Act 102, Eff. Aug. 28, 1964.

600.3252 Disposition of surplus money.

Sec. 3252. If after any sale of real estate, made as herein prescribed, there shall remain in the hands of the officer or other person making the sale, any surplus money after satisfying the mortgage on which the real estate was sold, and payment of the costs and expenses of the foreclosure and sale, the surplus shall be paid over by the officer or other person on demand, to the mortgagor, his legal representatives or assigns, unless at the time of the sale, or before the surplus shall be so paid over, some claimant or claimants, shall file with the person so making the sale, a claim or claims, in writing, duly verified by the oath of the claimant, his agent, or attorney, that the claimant has a subsequent mortgage or lien encumbering the real estate, or some part thereof, and stating the amount thereof unpaid, setting forth the facts and nature of the same, in which case the person so making the sale, shall forthwith upon receiving the claim, pay the surplus to, and file the written claim with the clerk of the circuit court of the county in which the sale is so made; and thereupon any person or persons interested in the surplus, may apply to the court for an order to take proofs of the facts and circumstances contained in the claim or claims so filed. Thereafter, the court shall summon the claimant or claimants, party, or parties interested in the surplus, to appear before him at a time and place to be by him named, and attend the taking of the proof, and the claimant or claimants or party interested who shall appear may examine witnesses and produce such proof as they or either of them may see fit, and the court shall thereupon make an order in the premises directing the disposition of the surplus moneys or payment thereof in accordance with the rights of the claimant or claimants or persons interested.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 297, Eff. Apr. 1, 1975.

600.3256 Affidavits to perpetuate evidence of sale; endorsement or annexation to one instrument.

Sec. 3256. (1) Any party desiring to perpetuate the evidence of any sale made in pursuance of the provisions of this chapter, may procure:

(a) An affidavit of the publication of the notice of sale, and of any notice of postponement, to be made by the publisher of the newspaper in which the same was inserted, or by some person in his employ knowing the facts; and

(b) An affidavit of the fact of any sale pursuant to such notice, to be made by the person who acted as auctioneer at the sale, stating the time and place at which the same took place, the sum bid, and the name of the purchaser; and

(c) An affidavit setting forth the time, manner and place of posting a copy of such notice of sale to be made by the person posting the same.

(2) Where any or all of such affidavits are endorsed upon or annexed to 1 instrument, a single copy of the notice of sale, and a single copy of any notice of postponement, shall be sufficient to annex to such

instrument, and reference made in any of such affidavits to copy of notice of sale and to copy of any notice of postponement of sale as annexed or attached shall be deemed to refer to such single copy of notice of sale and to such single copy of any notice of postponement.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3260 Affidavits to perpetuate evidence of sale; persons to take.

Sec. 3260. The affidavits specified in section 3256 may be taken and certified by any officer authorized by law to administer oaths.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3264 Affidavits to perpetuate evidence of sale; record; evidence.

Sec. 3264. Such affidavits shall be recorded at length by the register of deeds of the county in which the premises are situated, in a book kept for the record of deeds; and such original affidavits, the record thereof, and certified copies of such record, shall be presumptive evidence of the facts therein contained.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3268 Marginal notes to record of mortgages.

Sec. 3268. A note referring to the page and book where the evidence of any sale having been made under a mortgage, is recorded, shall be made by the register recording such evidence, in the margin of the record of such mortgage, if such record be in his office.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3272 Repealed. 2004, Act 538, Eff. Mar. 30, 2005.

Compiler's note: The repealed section pertained to notice to purchase of entire bid payment.

600.3276 Posting of notices; mortgagee's right of entry.

Sec. 3276. Incident to the foreclosure of a mortgage pursuant to the provisions of this chapter, the mortgagee, his agents and assigns shall have a right to enter upon the mortgaged premises for the purpose of posting or serving the notices required by this chapter.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.3280 Foreclosure by advertisement; deficiency; defenses.

Sec. 3280. When, in the foreclosure of a mortgage by advertisement, any sale of real property has been made after February 11, 1933, or shall be hereafter made by a mortgagee, trustee, or other person authorized to make the same pursuant to the power of sale contained therein, at which the mortgagee, payee or other holder of the obligation thereby secured has become or becomes the purchaser, or takes or has taken title thereto at such sale either directly or indirectly, and thereafter such mortgagee, payee or other holder of the secured obligation, as aforesaid, shall sue for and undertake to recover a deficiency judgment against the mortgagor, trustor or other maker of any such obligation, or any other person liable thereon, it shall be competent and lawful for the defendant against whom such deficiency judgment is sought to allege and show as matter of defense and set-off to the extent only of the amount of the plaintiff's claim, that the property sold was fairly worth the amount of the debt secured by it at the time and place of sale or that the amount bid was substantially less than its true value, and such showing shall constitute a defense to such action and shall defeat the deficiency judgment against him, either in whole or in part to such extent. This section shall not affect nor apply to the rights of other purchasers or of innocent third parties, nor shall it be held to affect or defeat the negotiability of any note, bond or other obligation secured by such mortgage, deed of trust or other instrument. Such proceedings, as aforesaid, shall in no way affect the title of the purchaser to the lands acquired by such purchase. This section shall not apply to foreclosure sales made pursuant to an order or decree of court nor to any judgment sought or rendered in any foreclosure suit nor to any chancery sale heretofore or hereafter made and confirmed.

History: 1961, Act 236, Eff. Jan. 1, 1963.